

AMENDED IN ASSEMBLY APRIL 4, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 811**

**Introduced by Assembly Member Zettel**  
**(~~Coauthor: Assembly Member Vargas~~)**  
**(*Coauthors: Assembly Members Vargas and Wayne*)**

February 22, 2001

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An act to amend Section 1250 of the Health and Safety Code, and to amend Section 6369 of the Revenue and Taxation Code, ~~relating to taxation, to take effect immediately, tax levy, relating to health care.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 811, as amended, Zettel. ~~Sales-Health facilities: sales and use taxes: exemptions:—exemption for medical supplies purchased by surgical clinics.~~

*Under the Health and Safety Code, the general definition of a health facility includes specified facilities that admit and care for patients for a period of 24 hours or longer.*

*This bill would modify the general definition of a health facility by eliminating the requirement that the patients must be admitted and cared for during a period of at least 24 hours.*

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for specified medical supplies purchased through a doctor's prescription, or furnished by a doctor, dentist, or podiatrist in the treatment of a patient, or furnished

by a health facility for treatment prescribed by a doctor, dentist or podiatrist.

This bill would expand the definition of medicines, for calendar years 2002 through 2006, to also include items generally used in hospitals and clinics, as well as auditory, prosthetic, ophthalmic, or ocular devices or appliances.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

~~This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 1250 of the Health and Safety Code is*  
2 *amended to read:*

3 1250. As used in this chapter, “health facility” means any  
4 facility, place, or building that is organized, maintained, and  
5 operated for the diagnosis, care, prevention, and treatment of  
6 human illness, physical or mental, including convalescence and  
7 rehabilitation and including care during and after pregnancy, or for  
8 any one or more of these purposes, for one or more persons, to  
9 which the persons are admitted ~~for a 24-hour stay or longer~~, and  
10 includes the following types:

11 (a) “General acute care hospital” means a health facility  
12 having a duly constituted governing body with overall  
13 administrative and professional responsibility and an organized  
14 medical staff that provides 24-hour inpatient care, including the  
15 following basic services: medical, nursing, surgical, anesthesia,  
16 laboratory, radiology, pharmacy, and dietary services. A general

1 acute care hospital may include more than one physical plant  
2 maintained and operated on separate premises as provided in  
3 Section 1250.8. A general acute care hospital that exclusively  
4 provides acute medical rehabilitation center services, including at  
5 least physical therapy, occupational therapy, and speech therapy,  
6 may provide for the required surgical and anesthesia services  
7 through a contract with another acute care hospital. In addition, a  
8 general acute care hospital that, on July 1, 1983, provided required  
9 surgical and anesthesia services through a contract or agreement  
10 with another acute care hospital may continue to provide these  
11 surgical and anesthesia services through a contract or agreement  
12 with an acute care hospital.

13 A “general acute care hospital” includes a “rural general acute  
14 care hospital”. However, a “rural general acute care hospital”  
15 shall not be required by the department to provide surgery and  
16 anesthesia services. A “rural general acute care hospital” shall  
17 meet either of the following conditions:

18 (1) The hospital meets criteria for designation within peer  
19 group six or eight, as defined in the report entitled Hospital Peer  
20 Grouping for Efficiency Comparison, dated December 20, 1982.

21 (2) The hospital meets the criteria for designation within peer  
22 group five or seven, as defined in the report entitled Hospital Peer  
23 Grouping for Efficiency Comparison, dated December 20, 1982,  
24 and has no more than 76 acute care beds and is located in a census  
25 dwelling place of 15,000 or less population according to the 1980  
26 federal census.

27 (b) “Acute psychiatric hospital” means a health facility having  
28 a duly constituted governing body with overall administrative and  
29 professional responsibility and an organized medical staff that  
30 provides 24-hour inpatient care for mentally disordered,  
31 incompetent, or other patients referred to in Division 5  
32 (commencing with Section 5000) or Division 6 (commencing with  
33 Section 6000) of the Welfare and Institutions Code, including the  
34 following basic services: medical, nursing, rehabilitative,  
35 pharmacy, and dietary services.

36 (c) “Skilled nursing facility” means a health facility that  
37 provides skilled nursing care and supportive care to patients whose  
38 primary need is for availability of skilled nursing care on an  
39 extended basis.

(d) “Intermediate care facility” means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) “Intermediate care facility/developmentally disabled habilitative” means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) “Special hospital” means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity.

(g) “Intermediate care facility/developmentally disabled” means a facility that provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) “Intermediate care facility/developmentally disabled—nursing” means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) “Congregate living health facility” means a residential home with a capacity, except as provided in paragraph (4), of no more than six beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified in paragraph

1 (2). The primary need of congregate living health facility residents  
2 shall be for availability of skilled nursing care on a recurring,  
3 intermittent, extended, or continuous basis. This care is generally  
4 less intense than that provided in general acute care hospitals but  
5 more intense than that provided in skilled nursing facilities.

6 (2) Congregate living health facilities shall provide one of the  
7 following services:

8 (A) Services for persons who are mentally alert, physically  
9 disabled persons, who may be ventilator dependent.

10 (B) Services for persons who have a diagnosis of terminal  
11 illness, a diagnosis of a life-threatening illness, or both. Terminal  
12 illness means the individual has a life expectancy of six months or  
13 less as stated in writing by his or her attending physician and  
14 surgeon. A “life-threatening illness” means the individual has an  
15 illness that can lead to a possibility of a termination of life within  
16 five years or less as stated in writing by his or her attending  
17 physician and surgeon.

18 (C) Services for persons who are catastrophically and severely  
19 disabled. A catastrophically and severely disabled person means  
20 a person whose origin of disability was acquired through trauma  
21 or nondegenerative neurologic illness, for whom it has been  
22 determined that active rehabilitation would be beneficial and to  
23 whom these services are being provided. Services offered by a  
24 congregate living health facility to a catastrophically disabled  
25 person shall include, but not be limited to, speech, physical, and  
26 occupational therapy.

27 (3) A congregate living health facility license shall specify  
28 which of the types of persons described in paragraph (2) to whom  
29 a facility is licensed to provide services.

30 (4) (A) A facility operated by a city and county for the  
31 purposes of delivering services under this section may have a  
32 capacity of 59 beds.

33 (B) A congregate living health facility not operated by a city  
34 and county servicing persons who are terminally ill, persons who  
35 have been diagnosed with a life-threatening illness, or both, that  
36 is located in a county with a population of 500,000 or more persons  
37 may have not more than 25 beds for the purpose of serving  
38 terminally ill persons.

39 (C) A congregate living health facility not operated by a city  
40 and county servicing persons who are catastrophically and severely

1 disabled, as defined in subparagraph (C) of paragraph (2) that is  
2 located in a county of 500,000 or more persons may have not more  
3 than 12 beds for the purpose of serving catastrophically and  
4 severely disabled persons.

5 (5) A congregate living health facility shall have a  
6 noninstitutional, homelike environment.

7 (j) (1) “Correctional treatment center” means a health facility  
8 operated by the Department of Corrections, the Department of the  
9 Youth Authority, or a county, city, or city and county law  
10 enforcement agency that, as determined by the state department,  
11 provides inpatient health services to that portion of the inmate  
12 population who do not require a general acute care level of basic  
13 services. This definition shall not apply to those areas of a law  
14 enforcement facility that houses inmates or wards that may be  
15 receiving outpatient services and are housed separately for reasons  
16 of improved access to health care, security, and protection. The  
17 health services provided by a correctional treatment center shall  
18 include, but are not limited to, all of the following basic services:  
19 physician and surgeon, psychiatrist, psychologist, nursing,  
20 pharmacy, and dietary. A correctional treatment center may  
21 provide the following services: laboratory, radiology, perinatal,  
22 and any other services approved by the state department.

23 (2) Outpatient surgical care with anesthesia may be provided,  
24 if the correctional treatment center meets the same requirements  
25 as a surgical clinic licensed pursuant to Section 1204, with the  
26 exception of the requirement that patients remain less than 24  
27 hours.

28 (3) Correctional treatment centers shall maintain written  
29 service agreements with general acute care hospitals to provide for  
30 those inmate physical health needs that cannot be met by the  
31 correctional treatment center.

32 (4) Physician and surgeon services shall be readily available in  
33 a correctional treatment center on a 24-hour basis.

34 (5) It is not the intent of the Legislature to have a correctional  
35 treatment center supplant the general acute care hospitals at the  
36 California Medical Facility, the California Men’s Colony, and the  
37 California Institution for Men. This subdivision shall not be  
38 construed to prohibit the California Department of Corrections  
39 from obtaining a correctional treatment center license at these  
40 sites.

(k) “Nursing facility” means a health facility licensed pursuant to this chapter that is certified to participate as a provider of care either as a skilled health facility in the federal Medicare program under Title XVIII of the federal Social Security Act or as a nursing facility in the federal medicaid program under Title XIX of the federal Social Security Act, or as both.

(l) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

SEC. 2. Section 6369 of the Revenue and Taxation Code is amended to read:

6369. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law.

(2) Furnished by a licensed physician and surgeon, dentist, or podiatrist to his or her own patient for treatment of the patient.

(3) Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician and surgeon, dentist, or podiatrist.

(4) Sold to a licensed physician and surgeon, podiatrist, dentist, or health facility for the treatment of a human being.

(5) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(6) Furnished without charge by a pharmaceutical manufacturer or distributor to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or furnished by a pharmaceutical manufacturer or distributor without charge to an institution of higher education for instruction or research, provided that the exemption provided in



1 this paragraph is limited to medicines of a type that can be  
2 dispensed only (A) for the treatment of a human being and (B)  
3 pursuant to prescriptions issued by persons authorized to prescribe  
4 medicines. The exemption provided in this paragraph shall include  
5 the materials used to package, and the constituent elements and  
6 ingredients used to produce, the medicines described in this  
7 paragraph and is intended to preclude any imposition of tax  
8 pursuant to Section 6094 or 6095 with respect to those materials,  
9 elements, and ingredients.

10 (b) “Medicines” as used in this section, means any substance  
11 or preparation intended for use by external or internal application  
12 to the human body in the diagnosis, cure, mitigation, treatment, or  
13 prevention of disease and commonly recognized as a substance or  
14 preparation intended for that use. From January 1, 2002, to January  
15 1, 2007, inclusive, the term “medicines” also includes any of the  
16 following, when furnished by a health facility for treatment of any  
17 person pursuant to an order of a licensed physician, surgeon,  
18 dentist, or podiatrist:

19 (1) Any auditory, prosthetic, ophthalmic, or ocular device or  
20 appliance.

21 (2) Articles that are in the nature of splints, bandages, pads,  
22 compresses, supports, dressings, instruments, apparatus,  
23 contrivances, appliances, devices, or other mechanical, electronic,  
24 optical, or physical equipment or article or the component parts  
25 and accessories thereof.

26 (3) Any alcoholic beverage the manufacture, sale, purchase,  
27 possession, or transportation of which is licensed and regulated by  
28 the Alcoholic Beverage Control Act (Division 9 (commencing  
29 with Section 23000) of the Business and Professions Code).

30 (c) Notwithstanding subdivision (b), “medicines” as used in  
31 this section means and includes any of the following:

32 (1) Sutures, whether or not permanently implanted.

33 (2) Bone screws, bone pins, pacemakers, and other articles,  
34 other than dentures, permanently implanted in the human body to  
35 assist the functioning of any natural organ, artery, vein, or limb and  
36 which remain or dissolve in the body.

37 (3) (A) Orthotic devices, other than orthodontic devices,  
38 designed to be worn on the person of the user as a brace, support,  
39 or correction for the body structure, and replacement parts for  
40 these devices. However, orthopedic shoes and supportive devices



1 for the foot are not exempt unless they are custom-made  
2 biomechanical foot orthoses or are an integral part of a leg brace  
3 or artificial leg.

4 (B) For purposes of this paragraph, “custom-made  
5 biomechanical foot orthoses” means an individually prescribed  
6 foot orthosis which is custom fabricated over a neutral or near  
7 neutral subtalar joint with a pronated midtarsal joint position  
8 positive plaster model of the patient’s foot, which model, when the  
9 cast is modified to support the osseous position of the forefoot in  
10 relationship to the rearfoot, embodies the angular osseous  
11 relationships of the anterior and posterior portions of the foot.

12 (4) Prosthetic devices, and replacement parts for those devices,  
13 designed to be worn on or in the person of the user to replace or  
14 assist the functioning of a natural part of the human body, other  
15 than auditory, ophthalmic, and ocular devices or appliances, and  
16 other than dentures, removable or fixed bridges, crowns, caps,  
17 inlays, artificial teeth, and other dental prosthetic materials and  
18 devices.

19 (5) Artificial limbs and eyes, or their replacement parts, for  
20 human beings.

21 (6) Programmable drug infusion devices to be worn on or  
22 implanted in the human body.

23 (d) “Health facility” as used in this section has the meaning  
24 ascribed to it in Section 1250 of the Health and Safety Code.

25 (e) Insulin and insulin syringes furnished by a registered  
26 pharmacist to a person for treatment of diabetes as directed by a  
27 physician shall be deemed to be dispensed on prescription within  
28 the meaning of this section.

29 (f) Orthotic and prosthetic devices, and replacement parts for  
30 these devices, furnished pursuant to the written order of a  
31 physician or podiatrist, shall be deemed to be dispensed on  
32 prescription within the meaning of paragraph (1) of subdivision  
33 (a), whether or not the devices are furnished by a registered  
34 pharmacist.

35 (g) Mammary prostheses, and any appliances and related  
36 supplies necessary as the result of any surgical procedure by which  
37 an artificial opening is created in the human body for the  
38 elimination of natural waste, shall be deemed to be dispensed on  
39 prescription within the meaning of this section.

40 **SEC. 2.—**

1     *SEC. 3.* Notwithstanding Section 2230 of the Revenue and  
2     Taxation Code, no appropriation is made by this act and the state  
3     shall not reimburse any local agency for any sales and use tax  
4     revenues lost by it under this act.

5     ~~*SEC. 3.* This act provides for a tax levy within the meaning of~~  
6     ~~Article IV of the Constitution and shall go into immediate effect.~~  
7     ~~However, the provisions of this act shall become operative on the~~  
8     ~~first day of the first calendar quarter commencing more than 90~~  
9     ~~days after the effective date of this act.~~

